IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. *Plaintiff* **v.** **CEMEX PUERTO RICO; ET AL.** *Defendants*	**CASE NO. 07-1658 (JAF)**

DEFENDANT ECOTERRA'S REQUEST TO CONSIDER ITS MOTION TO DISMISS UNOPPOSED

TO THE HONORABLE COURT
CHIEF JUDGE JOSE A. FUSTE:

COMES NOW, Defendant CANOPY ECOTERRA CORP. (hereinafter "ECOTERRA") through the undersigned counsel, reserving all affirmative defenses, including lack of jurisdiction, and very respectfully state and pray as follows:

1. On July 23, 2007, Plaintiff, American Waste Management and Recycling, LLC. (hereinafter "AWMR"), presented the captioned Complaint claiming breach of contract, collection of monies and damages.

2. On August 23, Defendant Ecoterra moved to dismiss the Verified Complaint filed by AWMR pursuant to Federal Rule of Civil Procedure 12(b)(1) & (2). See Docket #17.

Dockets.Justia.com

3. AWMR's due date for suggestions in opposition to Ecoterra's Motion to Dismiss was September 5, 2007.

4. AWMR bluntly informed this Honorable Court that it would "be filing its opposition to co-Defendant Ecoterra's motion to dismiss within the time allotted by the Local Rules, in order to fully brief the Court regarding this issue". See Docket #21, page 2.

5. However, the time allotted to oppose Ecoterra's motion to dismiss, per standard procedure as well as the term provided for in L.Cv.R. 7(b) came to pass without AWMR submitting its anticipated opposition. Thus, AWMR has waived any objection it may have had, valid or not, to Ecoterra's Motion to Dismiss.

6. The reason for AWMR's lack of opposition or objection is quite simple. Ecoterra's motion to dismiss relies in solid legal arguments that AWMR cannot surmount, clearly establishing that AWMR has no standing to initiate the above-captioned Verified Complaint in the Commonwealth courts and it certainly cannot try to circumvent that reality by presenting its suit in federal court.

7. Therefore, Ecoterra repeats its petition for this Honorable Court not to reward the obstinate behavior that AWMR has shown at all of the early stages of this case, and not to

entertain what is clearly a frivolous action filed by plaintiff.

WHEREFORE, Ecoterra respectfully requests that this Honorable Court consider Ecoterra's Motion to Dismiss as unopposed, any objections from AWMR to be considered as waived, and to move to DISMISS WITH PREJUDICE the captioned Verified Complaint imposing upon Plaintiff reasonable attorney's fees in favor of Defendants for what has been at all times an obstinate conduct from AWMR.

I hereby certify that on September 6, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

RESPECTFULLY SUBMITTED. At San Juan, Puerto Rico, this 6th day of September, 2007.

S/ ANTONIO VALIENTE
ANTONIO VALIENTE
USDC-PR No. 213906

NIGAGLIONI & FERRAIUOLI LAW OFFICES, P.S.C.
ATTORNEYS FOR CANOPY ECOTERRA CORP.
P.O. BOX 195384
SAN JUAN, PUERTO RICO 00919-5384
TEL: 787-765-9966
FAX: 787-751-2520
notices@nf-legal.com
antonio@nf-legal.com